

REMARKS

Amendments to the Claims

Upon entry of the amendment, claims 3, 7 and 13-22 are pending.

Claims 1, 2, 4-6 and 8-12 have been cancelled without prejudice or disclaimer. Claims 13-22 have been added and claims 3 and 7 have been amended. Support for these claims is found throughout the specification as filed, for example, at page 11, line 11 to page 13, line 16; page 37, lines 10-37; and page 38, line 24 to page 42, line 18. Therefore, this Amendment adds no new matter.

Reply to Restriction Requirement

The Examiner has required restriction of the claims under 35 U.S.C. 121 to one of the following inventions:

- I. Claims 1-2, drawn to a method for attenuating a cytomegalovirus (CMV) comprising functionally disrupting an open reading frame of a Toledo genome region.
- II. Claims 3-7, drawn to a chimeric CMV virus, Chimera I.
- III. Claims 3-6 and 8, drawn to a chimeric CMV virus, Chimera II.
- IV. Claims 3-6 and 9, drawn to a chimeric CMV virus, Chimera III.
- V. Claims 3-6 and 10, drawn to a chimeric CMV virus, Chimera IV.
- VI. Claims 3-6 and 11, drawn to a chimeric CMV virus, Towne/Tol11.
- VII. Claim 12, drawn to a method for producing an attenuated CMV virus comprising a CMV strain having a virulence region, and a second genome portion comprising a CMV strain lacking a virulence region.

The Examiner asserts that the inventions of groups I to VII are distinct from each other.

Applicants respectfully traverse the restriction requiring the election of a single chimeric CMV virus (*i.e.*, Chimera I, Chimera II, Chimera III, Chimera IV, Towne/Tol11; groups II-VI, respectively) and have amended claim 3 to recite a chimeric CMV virus, selected from the group consisting of Chimera I, Chimera II, Chimera III, Chimera IV and Towne/Tol11.

Applicants respectfully assert that a single search would identify any relevant art pertaining to a chimeric CMV virus, regardless of the particular nucleotide sequence of the chimeric CMV virus. Thus, contrary to the Examiner's contention, Applicants assert that to search and examine the subject matter of the chimeric CMV viruses together would not be a serious burden on the Examiner. The M.P.E.P. § 803 (Eighth Edition, August 2001) states:

If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.

Accordingly, Applicants have amended claim 3 and respectfully request that the Restriction Requirement under 35 U.S.C. 121 to Groups II-VI be withdrawn or modified such that Chimera I, Chimera II, Chimera III, and Chimera IV are examined in one application.

In order to be fully responsive, however, Applicants hereby provisionally elect to prosecute the claims of Group II (claims 3, 7 and 13-22) defined by the Examiner as being drawn to a chimeric CMV virus, Chimera I, with traverse. Applicant reserves the right to file a continuing application or take such other appropriate action as deemed necessary to protect the non-elected inventions. Applicant does not abandon or waive any rights in the non-elected inventions.

Anticipated Rejoinder of Claims Pursuant to M.P.E.P. § 821.04

The Examiner has required restriction between product and process claims. Applicants have elected to prosecute the product claims of Group II (claims 3, 7 and 13-22) defined by the Examiner as being drawn to a chimeric CMV virus, Chimera I. Applicant respectfully points out that the process claims of Groups I and VII (claims 1-2 and 12) have been canceled and that new claims 19-22 have been added which are directed to methods of prophylactic treatment of an human cytomegalovirus-related disease or condition. If the Examiner also withdraws these claims, Applicant respectfully requests that the Examiner rejoin claims 19-22 pursuant to MPEP § 821.04 in the event the independent claims from which they depend are allowed.

Conclusion

In view of the above remarks, it is believed that all claims are in condition for allowance, and it is respectfully requested that the application be passed to issue. If the Examiner feels that a telephone conference would expedite prosecution of this case, the Examiner is invited to call the undersigned.

Respectfully submitted,

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